



**United States Department of Justice**  
United States Attorney's Office  
Western District of Texas

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February 24, 2023

**Via: E-mail & CM/ECF**

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RE: *Texas v. Becerra*, Civil Action No. 7:23-cv-00022 (W.D. Tex.)  
Notice of Defective Service

Dear Counsel:

We received mail delivery in our Midland Office of a Complaint and Summons filed in the above-referenced case. A suit brought against a United States agency or a United States officer sued only in an official capacity must be served in accordance with Rule 4(i)(1)-(2). Specifically, Plaintiff must complete service on three different addresses: the United States Attorney's Office for the district where the complaint was filed (Rule 4(i)(1)(A)), the Attorney General of the United States (Rule 4(i)(1)(B)), and the agency or officer (Rule 4(i)(2)).

To comply with Rule 4(i)(1)(A), you must serve one of the individuals designated to receive service at the United States Attorney's Office. A list of designated individuals is available on the Court's website.<sup>1</sup> Please note that these individuals are in the San Antonio Division, not the Midland Division of the United States Attorney's Office.

While there are provisions in the Rules that allow for waiver of service, the United States and its agencies are not listed as entities that can waive service and, therefore, we must insist upon compliance with the applicable rules. *See* 1993 amendments to Fed. R. Civ. P. 4, subdivision (i). Defendant's actual notice of the litigation is insufficient to satisfy Rule 4's requirements. *See Ayika v. Sutton*, 378 Fed. App'x 432, 434 (5th Cir. 2010) (citing *Way v. Mueller Brass Co.*, 840 F.2d 303, 306 (5th Cir. 1988)).

<sup>1</sup><https://www.txwd.uscourts.gov/wp-content/uploads/For%20Attorneys/AmendedDesignationofAgentsforServiceofProcess.pdf>

We await proper service of Plaintiff's Summons and Complaint. Until proper service has been accomplished on the United States and/or its agencies, Defendants are not properly joined in your action, and no answer or responsive pleading is required. Fed. R. Civ. P. 12(a)(2).<sup>2</sup>

Sincerely,

JAIME ESPARZA  
UNITED STATES ATTORNEY

By: /s/ Liane Noble  
Liane N. Noble  
Assistant United States Attorney

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<sup>2</sup> Defendants do not waive any defense they may have regarding improper service of process.